

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 31 1996

Federal Communications Commission
Office of Secretary

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

DOCKET FILE COPY ORIGINAL

NYNEX COMMENTS

NYNEX Telephone Companies

William J. Balcerski

1111 Westchester Avenue
White Plains, NY 10604
(914) 644-6207

Their Attorney

Dated: October 31, 1996

No. of Copies rec'd
List ABCDE

AWG

TABLE OF CONTENTS

	Page
SUMMARY	i
I. INTRODUCTION.....	1
II. CERTAIN ASPECTS OF THE ORDER SHOULD BE RECONSIDERED AND/OR CLARIFIED	2
<i>A. OSS Access.....</i>	<i>2</i>
<i>B. Deployment of New Technology</i>	<i>3</i>
<i>C. Collocation.....</i>	<i>5</i>
<i>D. Switchovers</i>	<i>7</i>
<i>E. Transmission And Interoffice Facilities.....</i>	<i>9</i>
<i>F. Eminent Domain</i>	<i>10</i>
<i>G. Operator Services/Directory Assistance</i>	<i>11</i>
III. CERTAIN ASPECT OF THE ORDER SHOULD NOT BE RECONSIDERED AND/OR CLARIFIED	14
<i>A. Collocation Of RSMs</i>	<i>14</i>
<i>B. Dark Fiber</i>	<i>16</i>
<i>C. Promotions.....</i>	<i>19</i>
<i>D. Performance Standards</i>	<i>21</i>
<i>E. Line-To-NID Connection.....</i>	<i>21</i>
<i>F. AIN Access</i>	<i>21</i>
<i>G. Collocation Charges</i>	<i>23</i>
<i>H. Geographic Rate Deaveraging</i>	<i>24</i>
<i>I. Sub-Loop Unbundling.....</i>	<i>25</i>

TABLE OF CONTENTS

	<u>Page</u>
IV. PAGING COMPANIES SHOULD NOT BE CLASSIFIED AS LOCAL EXCHANGE CARRIERS AND SHOULD NOT RECEIVE RECIPROCAL COMPENSATION	27
<i>A. Paging Companies Do Not Provide Telephone Exchange Service or Exchange Access</i>	<i>27</i>
<i>B. Reciprocal Compensation Arrangements Should Not Be Applied To One-Way Paging Services.....</i>	<i>30</i>
<i>C. The Commission Correctly Concluded That Symmetrical Rates Are Inapplicable For Termination Rates For Paging Service Providers.....</i>	<i>32</i>
<i>D. Paging Service Providers Are Not Being Subjected To Discriminatory Rate Treatment.....</i>	<i>33</i>
V. CONCLUSION	35

SUMMARY

In these Comments, NYNEX addresses various issues raised by the Petitions for Reconsideration and/or Clarification of the Commission's First Report and Order. Prompt resolution of these issues is critical if the sweeping transformation of the telecommunications industry mandated by the Telecommunications Act of 1996 is to be quickly and fairly accomplished.

Certain aspects of the Commission's Order should be reconsidered and/or clarified. The Commission should clarify that incumbent LECs may provide competitors with access to Operations Support Systems (OSSs) using a gateway interface that provides comparable access (including response time) to the functions and information obtained by LEC employees through direct access to the OSSs. The Commission should also clarify that incumbent LECs are only required to provide access to the information contained in OSSs that are associated with the resale services and/or unbundled elements that are provided as a result of the negotiation/arbitration process. The Commission should also clarify that LECs are not required to deploy new technology or construct new facilities in their network in order to satisfy a request for interconnection or an unbundled element and that requesting parties cannot dictate the specific technology and/or facilities to be provided by a LEC. Furthermore, the Commission should clarify that as the LECs implement a broadband network capable of providing both video and telephony, they are not required to provide access to the video functionalities of such network. The Commission should also clarify that LECs are not required to provide shared transmission facilities between their central office and the switching facilities of another carrier.

The Commission should also reconsider and/or clarify certain aspects of its collocation rules. LECs should not be required to offer virtual collocation where physical collocation is

available. Collocation at locations other than central offices and tandems should not be required, but left to negotiation and arbitration. Finally, collocators should not have the right to have their own contractors perform any work outside their collocation node.

The Commission should reconsider its decision to require LECs to switchover a customer's local service from the LEC to a competitor in the same interval as LECs currently switch end users between interexchange carriers. The Commission should also reconsider its decision to require LECs to exercise their powers of eminent domain to establish new rights-of-way for the benefit of third parties.

The Commission should reconsider its decision that directory assistance service and operator services are network elements subject to the unbundling requirements of Section 251(c). The Commission should also clarify that the Act does not require incumbent LECs to offer resold lines without operator and directory assistance services, or to provide customized routing to a reseller's operator and directory assistance platform.

Certain aspects of the Order should not be reconsidered and/or clarified. The Commission should not allow CLECs to collocate remote switching modules at incumbent LEC premises. Incumbent LECs should not be required to provide dark fiber as a network element. The Commission should not include short-term promotional rates when calculating wholesale rates for retail services.

The Commission should not establish performance standards for incumbent LECs or require LECs to provide quarterly reports on meeting these standards. The Commission should not require incumbent LECs to permit a new entrant to connect its loops directly to the incumbent LEC's Network Interface Device. The Commission should not require further unbundling of AIN capabilities, including triggers for delivery to a third party SCP and

interconnection to a third party's AIN SCP database. The Commission should also not require incumbent LECs to recalculate their charges for collocation. The Commission should also reject several proposed changes to its geographic rate deaveraging rules.

The Commission should also rule that paging companies are not local exchange carriers and should not receive reciprocal compensation. Paging companies do not provide telephone exchange service or exchange access. The Commission was correct in determining that an incumbent LEC's costs for termination of traffic should not be used as a proxy for paging providers' costs. Reciprocal compensation arrangements should not be applied to one-way paging services. The Commission's Order does not subject paging service providers to discriminatory rate treatment.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
of 1996)	

NYNEX COMMENTS

The NYNEX Telephone Companies ("NYNEX")¹ hereby comment on the Petitions to Reconsider and/or Clarify certain aspects of the Commission's First Report and Order² in the above-captioned matter.

I. INTRODUCTION

The Commission's Order contains detailed, highly technical regulations that determine the what, where, when and how of network interconnection, unbundling of network elements, and resale of incumbent LEC services. In these Comments, NYNEX addresses various issues raised by the Petitions for Reconsideration and/or Clarification. Prompt resolution of these issues is critical if the sweeping transformation of the telecommunications industry mandated by the Telecommunications Act of 1996 is to be quickly and fairly accomplished.

¹ The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

² FCC No. 96-325 (August 8, 1996).

II. CERTAIN ASPECTS OF THE ORDER SHOULD BE RECONSIDERED AND/OR CLARIFIED

A. OSS Access

The Order requires incumbent LECs to provide nondiscriminatory access to its Operations Support Systems (OSSs) no later than January 1, 1997.³ NYNEX agrees with the Local Exchange Carrier Coalition ("LEC Coalition") that this deadline may not be realistic especially if the industry must meet a date certain for providing national interface standards, as requested by MCI. Moreover, the Commission should clarify that incumbent LECs may provide its competitors with access to its OSSs using a gateway interface that provides comparable access (including response time) to the functions and information obtained by LEC employees through direct access to the OSSs. If NYNEX is required to use the same gateway that its competitors use, NYNEX would be required to unnecessarily undertake a major system overhaul and incur significant expense to convert its systems and retrain its employees. The Commission should not impose such a requirement in the absence of a showing that using comparable interfaces materially disadvantages NYNEX's competitors (e.g., imposes significant additional delay in accessing the OSSs). The Commission should also clarify that incumbent LECs are only required to provide access to the information contained in OSSs that are associated with the resale services and/or unbundled elements that are provided as a result of the negotiation/arbitration process.

³ See Order, ¶ 525. These systems will be used by incumbent LEC competitors for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under Section 251(c)(3) and resold services under Section 251(c)(4).

B. Deployment of New Technology

The Order requires incumbent LECs to modify their facilities to the extent necessary to accommodate interconnection or access to network elements.⁴ However, the Order is unclear as to whether incumbent LECs are required to deploy new technology or construct new facilities to accommodate requests of parties seeking interconnection or unbundled network elements.

NYNEX agrees that to the extent LECs deploy new network facilities, equipment, features and functionalities in order to satisfy their general common carrier obligations, such facilities and features must be made available to other carriers on a nondiscriminatory basis. However, if a LEC does not currently offer a technology that a requesting carrier wants (e.g., if a party requested interconnection to a four fiber bi-directional line switched Sonet ring and NYNEX's infrastructure consisted only of a two fiber uni-directional path switched ring technology) or does not have a facility (e.g., a switch) in a location desired by a carrier, the LEC should not be required to make the investment necessary to provide that new feature to the carrier. NYNEX therefore supports the LEC Coalition's request that the Commission clarify that LECs are not required to deploy new technology or construct new facilities in their network in order to satisfy a request for interconnection or an unbundled element.⁵

⁴ Order ¶ 198.

⁵ The Commission should similarly reconsider its decision (¶ 590) that collocators are not required to supply their own transmission facilities. Such a requirement effectively puts NYNEX in the business of constructing new facilities for competitors and is nowhere to be found in the Act. This requirement also flies in the face of the extensive record compiled during the Expanded Interconnection proceeding and ignores the Commission's finding there that the provision of transmission facilities by interconnectors to collocation nodes is in the public interest.

Similarly, the Commission should clarify that requesting parties cannot dictate the specific technology and/or facilities to be provided by a LEC. This could force the LECs to “freeze” the technology that they have in place. For example, if a competitor’s customer is initially served by a copper loop, an incumbent LEC should not be precluded from evolving its network to a more efficient technology as long as the competitor receives the same capabilities at the point of interconnection (e.g., the incumbent LEC must be able to replace direct copper with a combination of copper and electronics or fiber and electronics).⁶ Such a requirement would eliminate the LEC’s ability to evolve its network and could force LECs to retain old technology that has become obsolete. The LECs should be allowed to replace network elements with newer technology so long as the functions desired by the requesting carrier are still available.

Furthermore, the Commission should also clarify that as the LECs implement a broadband network capable of providing both video and telephony, they are not required to provide access to the video functionalities of such network, but need only provide the telephony functionalities desired by the requesting interconnectors. Congress and the Commission have promulgated specific rules governing participation by telephone companies in video services, and have acted to encourage the provision of advanced state-of-the-art network elements and services. Requiring incumbent LECs to provide interconnectors with access to the video functionalities of a broadband loop would be inconsistent with these rules and effectively preclude the incumbent LEC from competing for the customer’s video business.

⁶ Furthermore, incumbent LECs should not be required, upon request by another carrier, to change the customer’s local loop from copper to fiber or vice versa.

C. Collocation

NYNEX supports the LEC Coalition's request that the Commission reconsider its requirement that incumbent LECs offer both physical and virtual collocation. Virtual collocation should be required only where physical collocation is not technically feasible.

The Commission's decision flies in the face of the plain language of the Act. Section 251(e)(6) clearly indicates that a LEC must provide virtual collocation only if it is unable to provide physical collocation. This does not preclude a LEC from offering both physical and virtual collocation if it so chooses. However, there is no requirement on a LEC's part to do so.

The Commission states that if it were to conclude that Section 251(e)(6) limits its authority to require virtual collocation, competitive providers would be required to undertake costly and burdensome actions to convert back to physical collocation even if they were satisfied with existing virtual collocation arrangements.⁷ NYNEX disagrees with the Commission's conclusion. The Act does not prohibit a LEC from offering virtual collocation or require a new entrant to convert from virtual to physical collocation.

The Commission states that virtual collocation should be offered to new entrants merely because "it may be less costly" than physical collocation. Not only is this speculative, it ignores the fact that the simultaneous provision of physical and virtual collocation is far more costly for an incumbent LEC since it presents extremely complex operational and administrative problems. For example, under virtual collocation, interconnectors would choose the equipment that the LEC must purchase, install and maintain. This equipment might not be familiar to LEC personnel. Further, the interconnectors might seek to impose provisioning, repair and

⁷ Order, ¶ 551.

maintenance standards different from those that the LEC imposes on itself. Even if the standards were the same, the LEC would find itself subject to potential charges of anticompetitive practices due to its provisioning of equipment for the interconnectors' end users while simultaneously competing for the same end users in the marketplace.

NYNEX has expended considerable resources to offer physical collocation as a result of the insistence of competitive access customers that physical collocation was superior to virtual collocation and important to their business plans. It would take significant additional work to file virtual collocation tariffs and to implement the procedures needed to administer virtual and physical collocation simultaneously.

NYNEX also agrees with the LEC Coalition that the Commission should reconsider its definition of the premises where collocation must be offered and instead only mandate collocation at the traditional LEC locations (e.g., LEC central offices and tandems) identified in the Expanded Interconnection Order for which substantial support on the record exists. Collocation at locations other than central offices and tandems should be negotiated on an individual basis or decided through the arbitration process.

The Order requires incumbent LECs to provide collocation at all LEC "premises" where technically feasible. The term "premises" is defined broadly to include LEC central offices, serving wire centers and tandem offices, buildings or similar structures that house LEC network facilities, as well as structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures.⁸

⁸ Order, ¶ 573.

Requiring LECs to provide collocation at any LEC building or structure that houses any piece of network equipment, when coupled with rules that prevent LECs from reserving space to meet their needs, creates significant operational security and network reliability problems. Many of the structures are too small to accommodate collocation equipment and too small for LECs practically to implement security measures to protect against harm to their own equipment. Although the Order allows LECs to seek waivers from State commissions on a case-by-case basis, this process will be enormously burdensome and time-consuming for both LECs and State commissions.

NYNEX further agrees with the LEC Coalition that the Commission should clarify that interconnectors do not have the right to have their own contractors perform any work outside the collocater's physical node. The Order allows collocating parties to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC.⁹ The Order, however, does not specify what portion of the physical collocation space is subject to subcontracting. Any work that may affect the operation of the entire central office and other collocators (e.g., power, cable racks, environmental conditioning) should be left to the exclusive control of the LECs.

D. Switchovers

The Order requires incumbent LECs to switchover a customer's local service from the LEC to a competitor in the same interval as LECs currently switch end users between

⁹ Order, ¶ 598.

interexchange carriers. This requirement applies to switchovers that only require a software change.¹⁰

NYNEX agrees with the LEC Coalition that the Commission should reconsider this requirement as it applies to rollovers to unbundled network elements which are then combined into an equivalent resale service. The Commission fails to recognize that the software changes required to effectuate a PIC change order (i.e., change of IC and associated billing) are less extensive than those required to switchover a customer from a LEC to a reseller, and far less extensive than switching over to a competitor using unbundled network elements.¹¹ A PIC change is a simple line feature change that is effective as soon as it is executed in the switch.¹²

Rolling over an existing customer to a reseller is more complex than a PIC change. The customer's account must be disconnected in NYNEX's billing systems and a final bill rendered. The customer's service must be transferred to the reseller's account, without interruption, so that the reseller becomes the customer of record, and usage on the line can be billed at the reseller's discounted rate. Unlike a PIC change that becomes effective as soon as it takes place in the switch, transferring an existing customer to a reseller does not become effective until changes in

¹⁰ Order, ¶ 421. Switchovers that require the incumbent LEC to make physical modifications to its network are not subject to this requirement.

¹¹ Under the Commission's requirement to combine elements, the resulting service can be analogous to retail/resale service. However, the software processes needed to accomplish switchovers are far more extensive in an unbundled element environment than they are for resale.

¹² The Commission, however, should be aware that the relatively seamless and timely PIC change capability offered to carriers today is the result of years of development on the part of the LECs working closely with the carriers. PIC changes to lines that involve complex translations, such as Multi-Line Hunt Groups and Centrex, are still handled on a manual basis, and take longer to complete than a simple PIC change.

the down stream billing systems described above are complete. If the reseller has customized routing, in order to rebrand operator services and directory assistance calls, or to send such calls to an alternate operator services and directory assistance provider for handling, the change will be further complicated by requiring a coordinated class of service change in the switch.

Rolling over an existing customer to a CLEC using network elements is even more complex than rolling over to a reseller. Again, the customer's account must be disconnected and a final bill rendered. At the same time the separate elements being used to provide the customer's service must be transferred to the CLEC's account in such a way that billing for each individual element can be established. This must be accomplished without separating the elements from each other in the incumbent LEC's inventory and assignment systems, and without interrupting the customer's service. At the same time, if the customer's service is to remain whole and be properly billed, these changes have to be coordinated with additional software changes in the switch which may include changing the class of service, feature activation and/or deactivation, and possibly changes related to number portability.

The Commission should therefore reconsider its requirement that incumbent LECs switchover customers in the same interval as a PIC change. The Commission should not impose any interval, but instead should leave the timing and coordination of rollovers to the negotiation/arbitration process.

E. Transmission And Interoffice Facilities

The Order requires incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch.¹³ The Order also requires incumbent LECs

¹³ Order, ¶ 440.

to provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers. The Order then goes on to require incumbent LECs to provide access to shared interoffice facilities and dedicated interoffice facilities, including facilities between incumbent LEC end offices, new entrant's switching offices and LEC switching offices.

Traditionally, shared facilities are only provided by an incumbent LEC between its central offices and its tandems, and not between its central offices and the switching facilities of another carrier. NYNEX is concerned that the Order could be interpreted to require LECs to generally provide shared facilities between all points in the incumbent LEC's network. NYNEX supports the LEC Coalition's request that the Commission clarify that the Order does not so require.

F. Eminent Domain

The Order requires LECs and other utilities to exercise their powers of eminent domain to establish new rights-of-way for the benefit of third parties.¹⁴ It is questionable whether a utility can exercise its power of eminent domain to condemn property for the benefit of a third party.¹⁵ Furthermore, eminent domain proceedings are time consuming and expensive.¹⁶

The Commission's reliance on Section 224(h) as support for its decision is misplaced. That section clearly does not require a utility to institute an eminent domain proceeding to

¹⁴ Order, ¶ 1181.

¹⁵ See City of Center Line v. Chmelko, 164 Mich. App. 251, 416 N.W.2d 401 (Mich. Ct. App. 1987).

¹⁶ For that reason, in New York, NYNEX has not instituted an eminent domain proceeding over the last ten years.

accommodate requests by third parties. It merely states that whenever a right-of-way owner intends to modify the right-of-way, it must give notice to any third party that has access to the right-of-way. It does not require the right-of-way owner to modify the right-of-way. NYNEX thus agrees with the LEC Coalition that the Commission should reconsider its decision on this issue.

G. Operator Services/Directory Assistance

The Order requires incumbent LECs to unbundle the facilities and functionalities providing operator services and directory assistance (OS/DA) from resold services and other unbundled network elements to the extent technically feasible.¹⁷ The Order further requires incumbent LECs to provide customized routing, including routing to a competitor's operator services or directory assistance platform.

NYNEX agrees with the LEC Coalition that the Commission should reconsider its determination that directory assistance service and operator services are network elements subject to the unbundling requirements of Section 251(c). Section 251(c)(3) only requires incumbent LECs to unbundle network elements which are defined as facilities or equipment used to provide telecommunications services, together with the features, functions and capabilities that are provided by such facilities or equipment. OS/DA are services provided by incumbent LECs as part of their local exchange service, not facilities or equipment. Thus, the Act's unbundling requirements do not apply.

If the Commission rules that OS/DA are network elements, it should at least clarify that incumbent LECs are not required to offer resold lines without OS/DA, or to provide customized

¹⁷ Order, ¶ 536.

routing to a reseller's OS/DA platform. Section 251(c)(4) only requires incumbent LECs to offer for resale "any telecommunications service that the carrier provides at retail to subscribers." Thus, if a requested service is not offered by a LEC to its retail subscribers as a stand-alone service, the Act does not require the LEC to provide that service for resale.

NYNEX does not offer OS/DA as a separate retail service. OS/DA is only provided as part of local exchange service. A customer cannot obtain local service without OS/DA. NYNEX also does not offer a retail service which routes OS/DA calls to an alternate operator platform.

In the Order, the Commission stated that "[t]he 1996 Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers."¹⁸ Rather, the Commission found that the Act "merely requires that any retail services offered to customers be made available for resale."¹⁹ In defining the scope of resale under Section 251(c)(4) as "merely requir[ing] that any retail services offered to customers be made available for resale," the Commission ignored AT&T's argument that it should be allowed to purchase for resale local exchange service without operator services.²⁰

Thus, under the plain language of the Act and the Order, incumbent LECs would not be required to offer resold lines without OS/DA or to provide customized routing to a reseller's OS/DA platform. However, in its discussion of unbundling of "Other Network Elements" under Section 251(c)(3) of the Act, the Commission stated that "incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold

¹⁸ Order, ¶ 872.

¹⁹ Order, ¶ 877.

²⁰ Order, ¶ 870.

services and other unbundled network elements to the extent technically feasible.”²¹ NYNEX asks the Commission to clarify that this single sentence was not intended to require incumbent LECs to unbundle OS/DA in the resale environment.

First, the sentence appears in Section V of the Order, which addresses “Unbundled Network Elements,” not resale. In Section VIII of the Order which addresses “Resale,” there is no requirement that a LEC provide resold services without OS/DA and reroute OS/DA calls to a reseller’s operator platform. As noted above, in that Section, the Commission ignored AT&T’s argument that it be allowed to purchase a retail service without operator services.

Second, the Commission examined this issue in the context of requesting “comment on other network elements the Commission should require LECs to unbundle” pursuant to Section 251(b)(3).²² In reviewing the requested Comments, the Commission noted that “[m]any parties support the Commission’s tentative conclusion that incumbent LECs should be required to unbundle ‘operator call completion services’ as a separate network element.”²³

Finally, the use of the term “technically feasible” in ¶ 536 also suggests that unbundled OS/DA and customized routing relate only to unbundled network elements and not to resold services. Under the Act, technical feasibility may be determinative of a LEC’s ability to provide unbundled network elements, not resale. By definition, resale entails reselling an existing

²¹ Order, ¶ 536.

²² Order, ¶ 529.

²³ Order, ¶ 530 (emphasis added).

service. Accordingly, there should be no issue regarding technical feasibility when a service already exists.²⁴

Thus, although the words “resold services” appear in ¶ 536, the OS/DA requirement stated therein should be limited to unbundling OS/DA as a separate network element and not as part of resale of retail services. Any other interpretation explicitly contradicts the Act and other portions of the Order which expressly limit to existing retail services those services a LEC is required to resell.²⁵ The Commission should therefore clarify that incumbent LECs are not required to offer resold lines without OS/DA or to provide customized routing to a reseller’s OS/DA platform.

III. CERTAIN ASPECT OF THE ORDER SHOULD NOT BE RECONSIDERED AND/OR CLARIFIED

A. Collocation Of RSMs

AT&T requests that the Commission clarify that it may collocate Remote Switch Modules (RSMs) in incumbent LEC space when the RSMs are used primarily to perform the functions of

²⁴ See Order, ¶ 554, which concludes that if a method of interconnection is already in use or has been used successfully in the past, there is a rebuttable presumption that that method is technically feasible.

²⁵ See, e.g., Order, ¶¶ 872, 877. Further confirmation for NYNEX’s position is found in the amendments to the Code of Federal Regulations implementing the Order. The rules governing resale of retail services by an incumbent LEC are set forth in subpart G, 47 C.F.R. § 51.201 (1996). In subpart G, the Commission reiterates that “[a]n incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers ...” 47 C.F.R. § 51.605 (1996). Nothing in subpart G requires LECs to provide retail services without OS/DA. While the rules specifically include, as an unbundling requirement, that incumbent LECs provide access to OS/DA facilities where technically feasible, the resale section of the rules contains no such requirement. Compare 47 C.F.R. § 51.319(g) to 47 C.F.R. § 51.601-617 (1996).

transmission equipment.²⁶ AT&T's request should be denied.²⁷ The Commission correctly decided the issue in the Order. Switching equipment is not necessary for interconnection or access to unbundled network elements.

AT&T's suggestions that CLECs should be allowed to collocate RSMs that are used "primarily" as transmission equipment is unmanageable and a feeble attempt on AT&T's part to mask the fact that RSMs are switching equipment. Furthermore, even if the RSMs were not used "primarily" for switching, one would have to question the efficiencies AT&T states it would achieve. For instance, AT&T argues that this equipment will replace the transmission equipment and would be at least as space efficient as the transmission equipment it replaces. AT&T's proposal, however, does not completely eliminate the need to install transmission equipment and actually requires redundant switching equipment at AT&T's host switching location, a fact they clearly admit.²⁸

The Commission is correct to not generically require the collocation of switching equipment in a collocated node. Such a restriction will promote the efficient use of central office space. In addition, the installation of switching equipment in the collocation node creates

²⁶ AT&T, p. 33.

²⁷ Similarly MFS's request (pp. 11-14) that the Commission determine that equipment used for routing digital signals in packet based networks is necessary for the interconnection or access to unbundled network elements should be denied. MFS has not provided any evidence that this equipment is anything but switching equipment. MFS's attempt to differentiate this equipment from switching equipment because it is used for digital signals in packet based networks is meaningless. Furthermore, MFS's request raises the entire issue of protocol conversion. Although MFS states that this equipment may perform intra-network protocol conversion, there is no meaningful way to ensure that the same equipment will not be used in the provision of end to end protocol conversion.

²⁸ AT&T, p. 32.

additional technical implications such as the potential for interference and the need to develop additional grounding and powering capabilities. Simply put, AT&T does not need to locate RSMs in the NYNEX central office in order to offer service in competition with NYNEX.

AT&T also states that if a CLEC cannot install an RSM in its collocated space, it must connect its digital loop carrier (DLC) with the incumbent LEC's DLC for customers served by the incumbent's DLC system, which can cause repair and maintenance difficulties for CLECs. AT&T inaccurately portrays the interconnection requirements of a leased NYNEX loop transported on a DLC system. Loops normally transported by Integrated Digital Loop Carrier (IDLC) will be "unbundled" to a DLC arrangement. Loops transported by DLC do not require termination on a second DLC system. Such loops may be connected to any standard multiplexing equipment. MCI has chosen to transport loops to its switching equipment via a universal subscriber loop carrier system (SLC), a short haul multiplexing device. No connection to a second DLC system was ever contemplated or required. Therefore, the noticeable degradation that AT&T claims will result from DLC to DLC connection is not an issue due to the availability of the DLC to SLC connection. The DLC to SLC connection does not involve degradation concerns. Accordingly, AT&T's argument is without merit.

B. Dark Fiber

AT&T and MCI request the Commission to reconsider its decision that incumbent LECs are not required to provide dark fiber as a network element.²⁹ Their request should be denied.

The Act (Section 3(29)) defines the term "network element" to mean a facility or equipment used in the provision of a telecommunications service. As MCI admits, dark fiber is

²⁹ Order, ¶ 450.

not “used” by a LEC to provide a telecommunications service.³⁰ Thus, under the Act, dark fiber cannot be considered a network element.

There are also a number of operational issues that make dark fiber inherently difficult or infeasible to provide. First, provisioning dark fiber is difficult because carriers likely will not wish to purchase the entire fiber cable. For example, AT&T has requested that it be able to splice and purchase whatever portion of fiber it chooses. However, splicing dark fiber will leave NYNEX with stranded fiber on either end of the portion AT&T would lease. The dead stranded fiber on either end would no longer be of any use to NYNEX and, in effect, would result in a surrender of NYNEX facilities to AT&T.³¹

Second, providing dark fiber to carriers also reduces NYNEX’s ability to reroute network failures in order to restore telephone services in the event of a disaster. For the most part, NYNEX transmission facilities utilize protection switching that automatically switches to different routes during a failure. However, when some or all of a cable is cut, NYNEX has the ability to utilize unlit fiber pairs to restore network services by physically patching the terminal equipment to the spare pairs. These pairs must be available for this purpose. Thus, leasing “unused” dark fiber to carriers would unnecessarily jeopardize the efficiency and service provided over NYNEX’s network.

Third, the more fragmented the network, the more difficult it will be to maintain any reasonable level of control, service quality and efficient operations. To this point, dark fiber

³⁰ LECs only use fiber facilities that are “lit.”

³¹ Ironically, providing dark fiber connections in the manner requested by AT&T would lead to the exhaustion of available facilities for the provisioning of other unbundled elements. Thus, providing dark fiber will strand capacity of fiber cables that could be used for the provisioning of additional unbundled elements.

interconnection between any combination of points such as manhole-to-manhole would require extensive changes to operational support systems. NYNEX would be required to administer the points of interconnection and maintain a database of interconnecting customers and locations. This information would be needed to track inventory availability for network additions, new circuit provisioning, maintenance trouble reporting and billing. Such administrative work would be in addition to maintaining network security, physically testing the arrangement and determining what and how to test the facilities. These functions raise totally new areas of operational concern for NYNEX and interconnecting carriers.

Finally, AT&T's argument that competition in the local exchange market will be enhanced if NYNEX is required to offer dark fiber is without merit. AT&T could provide the fiber cable itself by entering into conduit agreement(s) and constructing the fiber connection. AT&T could contract for construction with any number of non-regulated entities which are in the business of constructing fiber facilities.

The Act (Section 251(d)(2)) specifically states that in determining what network elements should be unbundled, the Commission must consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." Given that dark fiber can be obtained from numerous other sources, a CLEC's ability to provide telecommunications services absent this product will not be impaired. The Order further concludes that an incumbent LEC need not offer a particular unbundled element if "a new entrant could offer the same proposed telecommunications service through the use of other, non-proprietary unbundled elements within

the incumbent's network."³² Clearly, NYNEX's "lit" fiber transmission facilities are available to provide transmission of telecommunications services for AT&T and MCI. Thus, there is no basis under the Act to require incumbent LECs to unbundle dark fiber.

C. Promotions

AT&T and MCI ask the Commission to reconsider its decision to exclude short-term promotions from the incumbent LECs' obligation to offer retail services at wholesale rates. Their request should be denied.

As AT&T recognizes, the Order concluded there need not be an exemption for resale of LEC promotional or discounted services. However, in determining the wholesale price for such services, the Act (Section 252(d)(3)) requires a State commission to determine the "retail rate" for the service. As the Commission noted in the Order, the Act does not define the term "retail rate." However, it is clear that the rate charged by a LEC during a short-term promotional campaign is not the same as the "retail rate" that the LEC would normally charge after the promotional campaign has been concluded. Thus, the Commission's exclusion of short-term promotions is consistent with the Act.

Moreover, a contrary rule -- one that would require the incumbent LEC to use the promotional price as a base price for wholesale pricing purposes -- would in effect require a LEC to fund not only its own promotions but those of its competitors. This would deprive a LEC of much of its incentive to engage in promotions, and thus vitiate an important and pro-competitive marketing tool. In short, pricing resale services on the basis of promotional prices would suppress competition rather than enhance it.

³² Order, ¶ 283.